

DEPARTMENT OF STATE REVENUE

04-20160428R.ODR

Final Order Denying Refund: 04-20160428R
Sales & Use Tax
For Tax Years 2011, 2012, 2013, and 2014

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision or Final Order Denying Refund.

HOLDING

Manufacturer was not entitled to refund of sales and use tax because the transactions occurring in 2011 and 2012 were precluded by a prior audit's statistical sample for the same tax periods, and because Manufacturer failed to provide documentation to support its argument that it was entitled to the claimed exemptions.

ISSUE**I. Sales and Use Tax—Refund.**

Authority: IC § 6-2.5-5-3; IC § 6-2.5-5-5.1; IC § 6-2.5-5-7; IC § 6-2.5-5-9; [IC 6-2.5-5-40](#); IC § 6-8.1-3-12; IC § 6-8.1-4-2; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Conklin v. Town of Cambridge City, 58 Ind. 130 (1877).

Taxpayer protests the denial of a refund claim related to sales and use tax exemptions.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of manufacturing decorative labels for packaging for the household goods, food and beverage, and personal care industries. Taxpayer operates a printing plant in Indiana that manufactures heat transfer labels, in mold labels, and shrink sleeve labels using various machinery and tools.

On October 15, 2014, Taxpayer filed a GA-110L Claim for Refund requesting a refund of sales and use tax paid by Taxpayer on purchases of equipment and equipment supplies it claims were exempt because they were used in the company's manufacturing process. The Indiana Department of Revenue ("Department") issued a denial of Taxpayer's refund claim on March 22, 2016. The accompanying investigation report, which explained the basis for the denial, stated that the claim was denied because Taxpayer repeatedly failed to provide requested documentation to the auditor who reviewed the refund claim.

Taxpayer timely filed a protest of the refund denial. An administrative hearing was held at which Taxpayer explained the basis of its protest, and this Final Order Denying Refund results. Additional facts will be addressed below as necessary.

I. Sales and Use Tax— Refund.**DISCUSSION**

Taxpayer protests the refund denial, asserting that it is entitled to a refund of sales and use taxes paid on purchases of equipment and supplies that were used in its manufacturing process. As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463,466 (Ind. 2012). Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt

LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to an agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

As an additional matter, Taxpayer has the burden of establishing that it is entitled to the sought after exemption. In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Indiana Dep't of State Rev. v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). A statute which provides a tax exemption is strictly construed against the taxpayer. Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 101 (citing Conklin v. Town of Cambridge City, 58 Ind. 130, 133 (1877)). Furthermore, a taxpayer "must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC § 6-8.1-5-4(a). Thus, a taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong and that it is entitled to the requested exemption and resulting refund.

In its original refund claim, Taxpayer asserted that certain transactions that occurred during the relevant tax years are subject to various exemptions, including the manufacturing equipment exemption under IC § 6-2.5-5-3; the exemption for materials used in direct production under IC § 6-2.5-5-5.1; the non-returnable packaging exemption under IC § 6-2.5-5-9(d); exemption for materials used in construction under IC § 6-2.5-5-7; and exemptions for research and development under [IC 6-2.5-5-40\(c\)](#). During the protest, Taxpayer only addressed the manufacturing and packaging exemptions.

A. 2011 and 2012 Transactions

Taxpayer's request for refund of use tax paid on purchases made in 2011 and 2012 is precluded by a previous sales and use tax audit. The Department conducted a sales and use tax audit of Taxpayer's business for tax years 2010, 2011 and 2012, which concluded in 2013 ("2013 Audit"). The 2013 Audit report states that Taxpayer and the Department agreed upon a statistical sample for the expensed purchases for the audit period and the results were projected to the entire audit period, in accordance with IC § 6-8.1-4-2. IC § 6-8.1-3-12(b) states, in part, "[i]f the taxpayer and the department agree to a sampling method to be used, the sampling method is binding on the taxpayer and the department in determining the total amount of additional tax due or amounts to be refunded."

Taxpayer asks the Department to review sales and use tax assessments on transactions that occurred during the tax years considered by the 2013 Audit, arguing that these transactions were not included in the audit "pull list" that constituted the sample, and should therefore be reviewed for sales and use tax exemptions in the instant protest. However, because the transactions at issue fall within the sampling frame, they have been effectively reviewed and included in the results of the 2013 Audit. Taxpayer did not protest the results of the 2013 Audit and cannot now indirectly revisit the same transactions that were subject to the prior audit, regardless of whether the prior audit reviewed those specific transactions in the sample "pull list." Taxpayer agreed to the sampling methodology at the time of the 2013 Audit and is now bound by the results of that methodology. Purchases from 2011 and 2012 have already been reviewed for taxability, and Taxpayer cannot now include those purchases in the current protest.

B. 2013 and 2014 Transactions

With respect to transactions that occurred in 2013 and 2014, Taxpayer has failed to provide sufficient documentation to show that it is entitled to the claimed exemption. During review of Taxpayer's refund claim, the auditor conducting the investigation made repeated requests for documentation, which Taxpayer failed to provide. Specifically, the auditor requested copies of purchase orders in order to connect the invoices provided to the equipment Taxpayer claimed was exempt, and to determine the exempt nature of the purchases. Requests for the purchase orders were made on November 6, November 25, December 7, and December 21, 2015. The auditor explained that if Taxpayer did not provide the purchase orders, the Department would have to reject the claim for refund. The auditor finally concluded that the Department "does not have the ability to determine if any part of the refund request was part of the last audit or the ability to identify the exempt purposes for the charges," and denied the refund request.

During the protest, Taxpayer provided copies of the invoices along with spreadsheets noting that the purchases

qualified for various exemptions, including the manufacturing exemptions under IC § 6-2.5-5-3(b) and IC § 6-2.5-5-5.1, and the non-returnable packaging exemption under IC § 6-2.5-5-9(d), which were specifically addressed during the hearing. Taxpayer also provided a description and photographs of its manufacturing process. However, Taxpayer once again did not provide the purchase orders during the protest, which the Department previously requested in order to document the exempt nature of the purchases, nor has Taxpayer otherwise supported its claim that the transactions at issue fall within the exemptions. The spreadsheets listing the purchases merely conclude that the purchases are exempt without any supporting documentation to make such a determination. Furthermore, Taxpayer did not provide any analysis or documentation to show that it is entitled to the other requested exemptions, including exemptions for research and development and for materials used in construction. These arguments are therefore waived. *Scopelite*, 939 N.E.2d at 1145; *Wendt LLP*, 977 N.E.2d at 486 n.9.

Taxpayer has not met its burden of showing that it qualifies for the sought after exemptions, and thus has not met its burden under IC § 6-8.1-5-1(c) of proving that the Department's tax assessment is incorrect.

FINDING

Taxpayer's protest is respectfully denied.

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